

On the Brink

Prospects for UK nationals in the EU-27 after a no-deal Brexit

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September 2019

EXECUTIVE SUMMARY

A no-deal Brexit could create chaos in areas from air traffic control to food and medicine distribution. It could also radically affect the lives of the 3.6 million EU nationals living in the United Kingdom and nearly 1 million UK nationals living in the remaining EU countries, the EU-27. While the UK parliament is seeking to force the prime minister to request a further extension if a deal is not agreed by the end of October 2019, the European Union and each veto-holding Member State will have to agree. And even an extension would only defer, rather than extinguish, the risk of leaving without a deal. Citizens' rights could therefore be one of the major collateral costs of a no-deal Brexit.

Despite goodwill on both sides towards protecting mobile citizens' rights, a host of administrative, legal, and political challenges could arise in the case of a no-deal Brexit. The United Kingdom, with its much larger population of EU nationals, has already rolled out a pilot programme to enable resident EU citizens to adjust their legal status. Yet, numerous problems with the United Kingdom's EU Settlement Scheme have already come to light. And while the UK government announced its plans in June 2018, the EU-27 only began developing contingency plans in haste in the run-up to the March 2019 original Brexit deadline. As a result, their plans remain largely untested and skeletal—despite the extra time granted by the extension. The new contingency systems also place considerable onus on individuals, with extremely limited safeguards or provisions for those who fail to apply within the (often short) timeframes or to meet the criteria.

Since negotiations are likely to enter the eleventh hour, there is no buffer period to develop alternative plans or begin bilateral talks on key issues such as social security coordination before UK citizens become third-country nationals. Instead, EU countries have committed to transition periods of varied lengths during which Britons' current rights will be preserved and the details of their future rights hashed out. Meanwhile, there is likely to be confusion over the rights of newly arrived UK nationals in the EU-27; while the United Kingdom has proposed a European Temporary Leave to Remain scheme so that EU nationals who arrive after Brexit but before the end of 2020 can stay for 36 months, the EU-27 have only made plans for current residents. Timing will be king as all parties dance a delicate dance; much will depend on what can be negotiated during these transition periods and whether the new rules will come into effect before the old ones expire.

To smooth the process, Member States will need to ensure their systems for registering UK nationals are inclusive and streamlined. This could mean dropping some official criteria that have in the past been used

to deny EU nationals' residence permits (such as income and health insurance requirements) or making registration possible online. While UK consular services have been active in reaching out to Britons living in Europe, they will need to redouble efforts to engage hard-to-reach groups and to work with national, regional, and local governments in the EU-27 to get the message out to people who have disengaged from the Brexit process. Meanwhile, Member States could consider introducing grace periods for those who do not meet tight application timeframes, as well as additional safeguards and robust appeals processes for those who either fail to meet the deadline or have applications rejected. And flexible requirements, such as giving people the option to provide untraditional forms of evidence of residence (social-media records, for example), are preferable to blanket refusals that create a large irregular population.

Ultimately, what happens to the British population in the EU-27 will depend on wider negotiations about the future EU-UK immigration system. While there will be an immediate transition in their status from EU citizens to third-country nationals, it will take some time to understand the implications of this: a no-deal Brexit is likely to mark the transition from the pursuit of one deal to the pursuit of many, and citizens' rights should be high on the agenda.

I. INTRODUCTION

Prime Minister Boris Johnson's tough talk on his intentions to take the United Kingdom out of the European Union on 31 October 2019 with or without a deal has sent markets spinning, the pound plummeting,¹ and Britons stockpiling food and medicine.² A worst case scenario paper, produced by the UK government in August 2019, also warned of potential public disorder and hampered ability to prevent and control disease outbreaks.³ Millions of EU nationals in the United Kingdom and British residents of the remaining 27 EU countries are also likely wondering about their pensions, health care, educational access, or even whether they will be able to stay in the countries they have made their homes.

The November 2018 withdrawal agreement laid out by EU and UK negotiators had preserved many of their rights and offered a vital cushioning transition period in which to resolve outstanding issues.⁴ Yet nearly a year later, that deal has failed to clear the UK parliament.⁵ At the start of September 2019, UK parliamentarians eager

to avert a no-deal Brexit rushed through a bill that would force the government to request a further extension if they are again unable to agree on a deal before the cliff edge.⁶ But even if this happens and the UK prime minister complies with the bill, the European Union and each of its Member States must also agree to back an extension—with French diplomats, frustrated by the lack of progress in the negotiations, already threatening to veto such a move.⁷

The EU population in the United Kingdom is the larger of the two affected groups—an estimated 3.6 million⁸ compared to approximately 900,000 Britons in all EU-27 Member States combined.⁹ The United Kingdom has launched the EU Settlement Scheme through which EU nationals can apply to secure their residence status in the country, but this has already thrown up a host of challenges, and concerns are being raised about a disproportionate number being given 'pre-settled status' instead of full settled status.¹⁰ Still, planning in the United Kingdom is further along than in most of the EU-27, with UK contingency measures even extending to cover EU citizens who arrive after Brexit but before 31 December 2020, who will be granted 36 months of temporary leave to remain.¹¹ Additionally, the UK Home Office has allocated a pot of £9 million to civil-society organisations to help with outreach and support.¹²

While the United Kingdom was forced to spell out fairly early on what the situation would be for its EU-national residents in case of 'no deal', the other Member States were not. And with comparatively smaller UK-citizen populations at risk, the sense of urgency was less severe. Whereas the United Kingdom had already rolled out a pilot of its settlement scheme by November 2018,¹³ contingency planning among the EU-27 only began in earnest in the months running up to the originally scheduled March 2019 departure date and was thus by necessity skeletal. It was not until September 2019 that the French government announced its intention to pilot and then launch an online registration system for British nationals. The system may not be running until Brexit day, and no additional resources have been announced to process the applications.¹⁴ With no other pilot programmes analogous to the UK settled status process, problems in the EU-27 are only likely to crystallise after the United Kingdom's exit date, which could be too late.

The latest Brexit extension pushed this exit date from March to October 2019, and there is a chance it could be moved back further to 31 January 2020 under a new bill that attempts to avert a no-deal Brexit by forcing the UK prime minister to request another extension if parliament does not reach an agreement by the October

deadline.¹⁵ This has bought Member States more time to beef up contingency plans and make necessary legislative changes—though there is little indication that this has been capitalised on. The extension also penalised the few countries, such as the Netherlands, that were ready to roll out their no-deal preparations on schedule and had hired additional staff for the original March deadline. With a no-deal scenario still on the cards, especially if the European Union does not agree to an additional extension, pressure is mounting once again to ensure a smooth post-Brexit transition. If the March ‘dress rehearsal’ raised red flags all over the continent over Brexit (un)preparedness, this is the time to fix them.

With the clock once again winding down on the Brexit deadline, and with no resolution in sight, this policy brief examines what progress has been made across the EU-27 on planning for how to treat UK-national residents in the event no deal is reached. It also recommends strategies for what could be done now to close gaps in legislative frameworks and registration systems, and considers what lies ahead.

II. CONTINGENCY PLANNING FOR NO DEAL

If the United Kingdom leaves the European Union on 31 October 2019 without a deal, UK nationals will become third-country nationals overnight, which means they will no longer be covered by EU freedom of movement rules.¹⁶ Britons today benefit from extensive protections against unequal treatment, enjoying most of the same rights in other EU Member States as those countries’ citizens; they also benefit from comprehensive provisions for coordinating among the 28 Member States’ social security, health-care, and judicial systems. But from 1 November on in a no-deal Brexit, they will fall under the much more minimal legislation for third-country nationals, which makes no similar guarantees and is not designed for the unique situation of ‘former EU nationals’—a category for which there is no legal status or precedent.

In theory, all 27 remaining EU Member States are committed to enabling UK residents to stay. The European Commission, in its contingency planning for a no-deal Brexit, suggested the EU-27 ‘take a generous approach to the rights of UK citizens in the EU, provided that this approach is reciprocated by the UK’.¹⁷ And in late 2018 and early 2019, Member States produced a flurry of con-

tingency legislation and planning documents designed to limit the damage. But while European countries are proud of what had been accomplished in that short timeframe, many of these plans were rushed and incomplete. Officials acknowledged they were late to the party because of their confidence that the withdrawal agreement would be approved, forcing them into a tradeoff between meeting the deadline and covering every aspect of citizens’ rights, including residency, employment, health care, and social insurance, and all the other policy areas affected by Brexit, such as customs and trade.¹⁸ In many cases, countries have merely set out plans for a transition period, leaving the development of more detailed policies and programmes for what will replace it for later.¹⁹

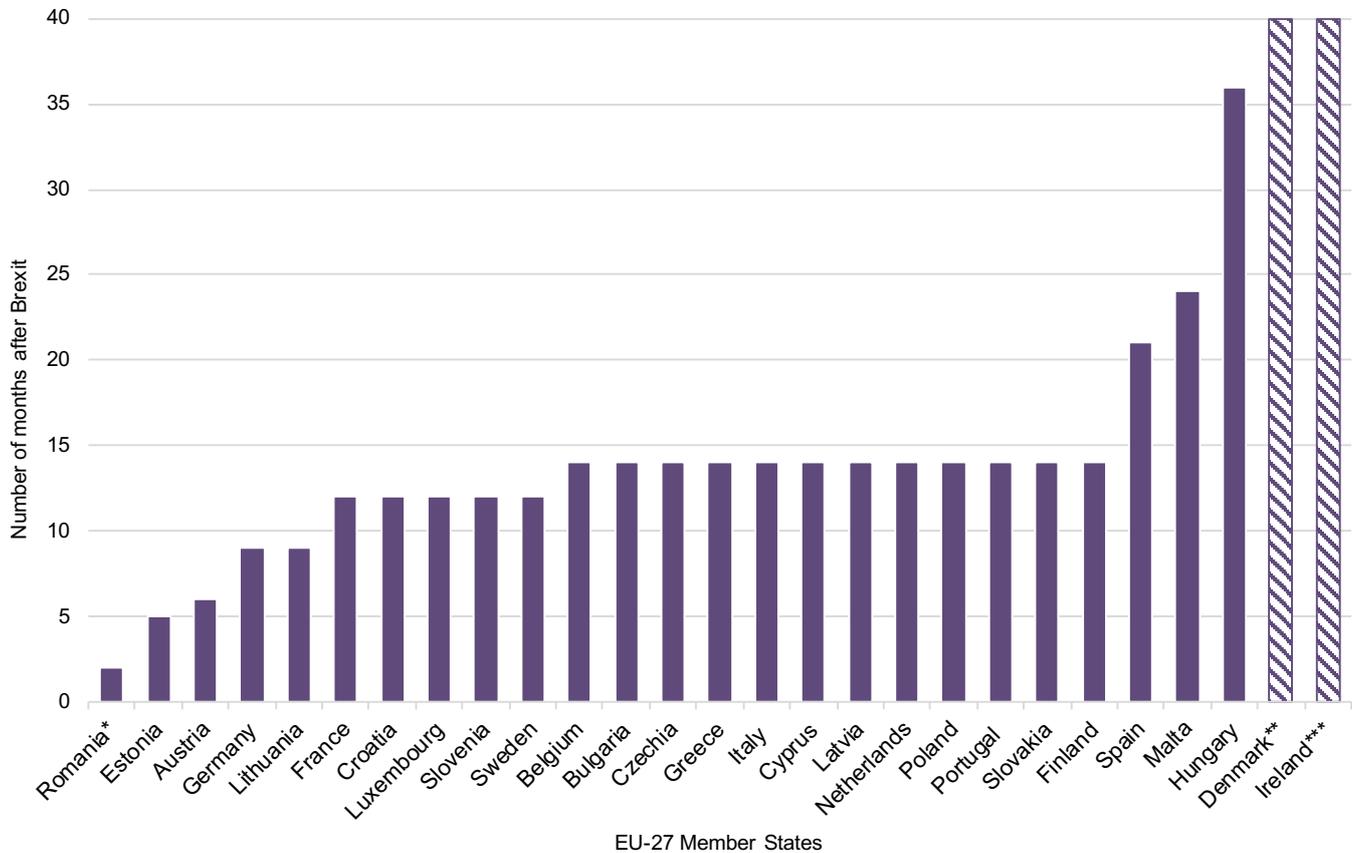
Moreover, the approach Member States have taken varies greatly and this detail will dictate the situation many Britons abroad face. Almost all of the EU-27 Member States have decided to introduce a transition period, but these range from two to 36 months (see Figure 1). The two exceptions are Ireland, which will maintain the Common Travel Area with the United Kingdom that makes a transition period unnecessary for immigration purposes, and Denmark, which has set out plans for an indefinite transition period that will last until permanent policy solutions are in place.

During these transition periods, UK nationals who were already resident in the EU-27 before Brexit will enjoy continued access to the labour market before needing to apply for work permits or new residency cards. Those with permanent residence documents will be able to retain this status. Yet many of these transition periods leave Britons little time to resolve their situations. Since legislation in many Member States was developed around the original 29 March 2019 deadline, some countries specified deadlines that are now very soon and will need to be updated, especially if there is a further extension until 31 January 2020.²⁰

III. GAPS IN CONTINGENCY PLANNING

While Member States are proud of what was accomplished in the crunch time leading up to March, the true test will come when they need to put meat around skeletal plans. Legislation to prepare for Brexit has not been through the normal degree of scrutiny for policies that will potentially affect thousands of people.²¹

Figure 1. How long after 31 October 2019 do UK citizens in the EU-27 have to get a new residence permit in the case of a no-deal Brexit?



* Romania's transition period is to be adjusted to take into account the Article 50 extension.
 ** In Denmark, the transitional scheme is indefinite until replaced by a permanent solution.
 *** Ireland's situation is unique in that the Common Travel Area it shares with the United Kingdom negates the need for a transition period.

Source: European Commission, 'UK Nationals' Residence Rights in the EU27', accessed 27 August 2019, https://ec.europa.eu/info/brexit/brexit-preparedness/citizens-rights_en.

Moreover, much has been kicked down the road; social security coordination will need to be developed during the transition periods, some of which are quite short. It is also unclear what permanent solutions for residency, labour market access, health care, and social security will replace the temporary arrangements for UK nationals. All told, officials have described the prospect of a smooth transition without a deal as 'miraculous'.²²

A. Residence permits

In most cases, post-Brexit residence permits will be based on current systems of municipal registration for EU nationals. In countries with mandatory registration systems, such as Belgium and the Netherlands, authorities believe the share of resident EU nationals who are unregistered to be low, though anecdotal evidence suggests it may be

higher than expected.²³ In other countries, such as France, Cyprus, and Spain, where registration has to date either not been necessary or not been enforced, a large volume of people could apply after the exit date.²⁴ While official policy in all Member States is to encourage UK nationals to register now through current registration processes, this could amplify existing barriers and grey areas with these systems (see Box 1).²⁵

Some Britons who have lived in an EU-27 country for an extended period may be able to smoothly transition to permanent residence, which is granted automatically to EU citizens after five years of continuous legal residence.²⁶ But those who, despite meeting this five-year requirement, lack proof of residence may face challenges accessing this more secure status. This is particularly likely to be the case if countries set a high bar for documentary evidence, such as five years of address and employment records.²⁷ As a result, some long-term residents

could find themselves having to start from scratch, leaving them locked in place, unable to move on a temporary basis for fear of losing their residence status.

Additionally, application volume is likely to create its own challenges. In France, backlogs are already preventing UK nationals from securing their future status, and confusion among local authorities led some to announce they would no longer issue appointments for residency applications to Britons in expectation of new provisions being introduced.²⁸ And in Cyprus, the unregistered British population is estimated to be up to 20,000 or more—out of the country’s total population of only 850,000.²⁹

Another question mark hangs over whether Member States will impose additional criteria for those who apply for permanent residence after the transition period. Once Britons are no longer EU nationals, Member States will not be bound by the principles of equal treatment that govern how each other’s citizens access permanent residence. In practice, this means that they could impose language requirements, civic integration tests, or income requirements—perhaps drawing from current processes for third-country nationals, which tend to be much more stringent.³⁰ In Austria, for instance, third-country-national applicants for permanent residence (Daueraufenthalt – EU) have to prove adequate means of income, equal to

Box 1. Barriers to registration: exposing gaps in the free movement framework

The premise of any future registration process in the EU-27 will be to assess whether UK nationals are *legally* resident under EU law. This means these processes could entail a host of additional checks either during initial registration (for Britons not yet in possession of legal residence documents) or when transferring to a future system. These could include criminal record checks, review of employment contracts for workers, verification that economically inactive and retired applicants have sufficient financial resources, and checks of whether economically inactive residents and students have private health insurance.

All of these requirements have been used in the past to deny mobile EU nationals municipal registration, permanent residence, and benefits. In Sweden, for example, registration for a personal identity number (personnummer) depends on being able to furnish a one-year employment contract or other evidence of income that can be hard to come by.

The situation in France portends future challenges across the bloc. While EU nationals are not required to register—and indeed have in the past been discouraged from doing so—the residency card (carte de séjour) system has been overloaded by recent applications from Britons. The government announced in September 2019 that it will launch a new online registration platform for British nationals in an attempt to simplify and standardise a process that currently differs from one local prefecture to another, which has created a lottery where some applicants receive quick appointments and responses and others face long delays.

It remains to be seen whether this new system will address some of the gaps in current registration processes. Under the existing system, many individuals and families have had their applications turned down for insufficient income reasons. One (nonrepresentative) survey conducted by the interest group British in Europe amongst its members found that 15 per cent of applications for a carte de séjour were being rejected. Similarly, Goldsmiths, University of London’s ‘BrExpats’ project interviewed numerous UK nationals in France who were caught in the double bind of being too ill to work, but lacking sufficient resources to either qualify for legal residence in France or readily return to the United Kingdom.

The challenges coming to light with the EU Settlement Scheme in the United Kingdom, with many applicants being rejected because of bureaucratic quirks or a lack of documentary evidence, also hints at what could be in store for UK nationals in the EU-27 after a no-deal Brexit.

Sources: The Local, ‘Brexit: France to Launch New Website for British People to Apply for Carte de Séjour’, The Local, 10 September 2019, www.thelocal.fr/20190910/british-people-in-france-can-apply-online-for-residency-after-brexite; The Local, ‘Carte de Séjour: What Can I Do If I Am Refused Permission to Remain in France?’, The Local, 16 April 2019, www.thelocal.fr/20190416/what-are-my-rights-if-i-am-refused-permission-to-remain-in-france; Lisa O’Carroll, ‘Flawed Home Office App Stops EU Citizen Getting Settled Status’, *The Guardian*, 15 July 2019, www.theguardian.com/politics/2019/jul/15/flawed-home-office-app-stops-eu-citizen-getting-settled-status.

the minimum pension in Austria (933.06 euros monthly for singles; 1,398.97 euros for couples), as well as suitable accommodation, health insurance, and verification that they pose no risk to public order and security.³¹ And while this permanent residence status usually carries a German language requirement, this was considered and then ultimately waved for ‘first’ applications from UK citizens.³²

All of this raises three major questions:

- ▶ ***What happens to people who do not apply within the deadline?*** Current planning places the onus on individuals to apply before the deadline set by authorities. Yet, the timelines vary widely among Member States, with some short or subject to frequent amendments, making it hard for UK nationals to stay abreast of developments.³³ Member States’ contingency plans contain no provisions for those who do not apply within the deadline, for whom public authorities take no official responsibility.³⁴
- ▶ ***How will authorities distinguish between pre- and post-Brexit arrivals?*** The transition period under the draft withdrawal agreement created a bumper between Brexit day and the introduction of a new immigration regime. Without it, UK citizens who arrive in the EU-27 after Brexit will be under a new set of rules (for third-country nationals) from Day 1; this will make it difficult to distinguish between resident UK nationals who are eligible for a special Brexit status—but who fail to register before Brexit day—and those who arrive after the withdrawal. Those caught in this gap may face difficulties proving their rights to work, access medical or social care, rent accommodation, or even enter the territory. On the UK side of things, the British government recently walked back from promises to immediately end free movement, instead agreeing to maintain the current system of visa-free access to employment and residence for all EU nationals until 2021—and allow those who arrive during that time to apply for temporary leave to remain for an additional 36 months.³⁵
- ▶ ***What happens to people whose applications are rejected?*** Even if the draft withdrawal agreement or some version of a deal goes through, no Member State has published plans for how to handle those whose applications are rejected. These failed applicants could be at risk of deportation or debarred from accessing public services. Without the withdrawal agreement, there are very minimal safeguards and options to appeal negative decisions. There is also the risk that people are wrongly refused their

right to remain, and because the number of applicants will be large, even if mistakes only affect 1 per cent of the population, that would still represent thousands of people.

As described by one official, Brexit places a magnifying glass over existing deficiencies within the free movement system—namely, that it enables mobile EU nationals to live in a situation of tolerated irregularity, allowing them to make a country their home without fulfilling the criteria for legal residence.³⁶ Since Brexit requires UK nationals to stand up and be counted, it could reveal to many for the first time that they have not been legally resident or bar some long-term residents from gaining permanent residence status.

B. Social security coordination and health care

Beyond some unilateral statements, social security coordination has not been part of contingency planning, leaving a great deal of work ahead should no deal materialise. Thus far, most commitments on both sides have been hypothetical or time limited. For instance, the United Kingdom promised it would continue to ‘uprate’ state pensions ‘subject to reciprocity’ (i.e., to continue increasing them relative to inflation), a commitment that it has since upgraded to uprating pensions for the next three years while it pursues a more lasting arrangement.³⁷

Similar commitments on the EU side make clear that a negotiation needs to happen before anything permanent can be agreed, though it is unclear whether that would be an EU-wide or bilateral process (see Section V.B.). In the meantime, several Member States have been looking into whether prior agreements could be legally reactivated—and whether that would be desirable. The European Union has also put in place a series of contingency measures to ensure that social security entitlements acquired before Brexit are protected.³⁸

Without a deal, Britons’ access to health care in the EU-27 will change. Some UK nationals who are registered for health care as EU citizens will still be able to access services under EU-27 transition period plans. But in some instances, this is also based on reciprocity from the United Kingdom. In March 2019, the UK government made an offer to all EU countries to maintain existing reciprocal health-care arrangements until 31 December 2020, but on 23 September 2019 it confirmed that it would only absorb costs for posted workers, pensioners, persons on disability benefits, and students for six months without such an agreement.³⁹ For persons in the middle

of treatment on exit day, the UK government committed to covering costs for up to one year. Rather than allaying concerns, however, the announcement sparked accusations of betrayal and heightened confusion, with Britons in some EU-27 Member States concerned that more generous contingency offers—such as health-care coverage for two years in France—might be trimmed back.⁴⁰

The European Union’s contingency plans allow Britons who access medical care before Brexit to remain eligible for reimbursement for that treatment after the withdrawal, and those with ongoing medical treatment to continue receiving care. But when it comes to social welfare, it is up to individual Member States to decide whether to take a generous approach to paying UK citizens who arrive from another EU country (or the United Kingdom) for sickness and other benefits (such as for maternity and paternity benefits) that they were entitled to in their previous country of residence.⁴¹

According to the 23 September 2019 announcement, UK nationals living in the EU-27 who are insured by the United Kingdom, such as those drawing a state pension, will be able to access the National Health Service (NHS) in England, Wales, and Scotland free of charge, even during temporary visits. Meanwhile, other vulnerable Britons who have no choice but to return to the United Kingdom will only be able to access the NHS from when they take up ‘ordinary residence’ in the country.⁴² In a no-deal scenario, UK-issued European Health Insurance Cards (EHIC) may not be valid for travel to other Member States, and EU-27-issued EHIC cards may not be valid in the United Kingdom. If this is the case, UK nationals may need to take out private health insurance, especially if they are not registered with the NHS.

IV. VULNERABLE GROUPS

Britons of all stripes living in the EU-27 could face serious challenges post-Brexit in the event no deal is passed. However, a few groups are especially vulnerable:

- ▶ **Mixed-nationality families.** Among the existing limitations within the free movement system that Brexit is likely to exacerbate are the difficulties non-EU-citizen family members of EU nationals face when seeking to exercise the rights to which they are entitled on paper. These third-country nationals already experience demands for excessive documentation, delays in getting visas or residence cards, visa fees, and unjustified refusals.⁴³ Brexit may also create ad-

ditional hurdles related to family unification. Family members who join UK nationals in an EU country after the exit date (especially if their relationship did not predate Brexit) may have to fulfil the more onerous requirements that govern family unification for third-country-national residents, which can include integration and financial requirements.⁴⁴ For Britons considering a move back to the United Kingdom, one of the major points of contention is that they will lose their so-called Surinder Singh rights, which currently allow them to bring third-country-national family members from another Member State to the United Kingdom without meeting the country’s family unification income threshold, currently set at £18,600.⁴⁵

- ▶ **Same-sex partners.** While same-sex marriages are allowed in 14 Member States, six do not even allow registered or civil partnerships for same-sex couples; for the purposes of free movement, these countries instead ask applicants to provide evidence that they are in a ‘durable’ relationship, which can set a high bar and leave a considerable degree of discretion to implementing authorities.⁴⁶ A 2018 ruling in the Court of Justice of the European Union determined that all Member States must recognise same-sex spouses for the purposes of free movement, even where such marriages are not allowed under national legislation, but this does not extend to unmarried partners.⁴⁷ Moreover, if UK nationals are subject to third-country-national rules for family reunification after Brexit, their same-sex partners may find it even more difficult to gain entry and residence.
- ▶ **Children.** Children are largely dependent on their carers when it comes to successfully managing the Brexit transition—including an unknown number of British children in the care of an EU-27 state. Parents and guardians may wrongfully assume that their children do not need to apply for a new status (e.g., because they were born in the country of residence), which could create challenges later on when they apply for jobs, permanent residency, or citizenship. After Brexit, gaps in cross-border family law could create disputes over maintenance payments and parental responsibility, and make it difficult to enforce decisions made in the United Kingdom.⁴⁸ British families in the EU-27 whose children study elsewhere could find themselves split up if their time away makes them ineligible for post-Brexit residence status.
- ▶ **Pensioners.** Retired Britons living in the EU-27 could face a host of challenges related to their pension incomes, health care, and access to social as-

sistance. The falling pound has already hit this group hard, and for those who receive income from private pensions, a no-deal Brexit threatens to invalidate the licenses that Member State insurance providers are required to hold to pay contracts, including private pensions, overseas.⁴⁹ The issue of pensions uprating, described in Section III.B., will be critical to maintaining living standards. The United Kingdom has only committed to uprating state pensions for UK recipients in the EU-27 until 2023, with plans beyond that subject to reciprocity. Early retirees, who are not eligible for S1 health coverage since they have not started drawing a pension, could face additional challenges when securing legal residence, since under EU law they are required to have private health insurance.

- ▶ **Cross-border workers and service providers.** Workers active in several EU countries, such as lawyers and consultants, are among those most likely to face additional challenges after Brexit. The same is true of those in untraditional occupations (such as film and video editors or software developers) and those who do not fit the definition of ‘frontier workers’⁵⁰ because they do not commute on a regular basis. For instance, artists and musicians who travel round the European Union to perform may find that the loss of their free movement rights makes this much harder.⁵¹
- ▶ **Seasonal workers.** UK citizens who spend part of their time in the United Kingdom or move between different EU countries (e.g., to take advantage of seasonal work opportunities) may find themselves ‘landlocked’ by Brexit. They may only gain the right of residence in one EU country, or they may find even that difficult because they have spent more than 180 days per year away from the place they call ‘home’. The travel and tourism sectors, which serve destinations popular with UK tourists, rely heavily both on posted workers (see below) and UK nationals exercising their free movement rights. Many seasonal jobs, such as chalet workers or nannies and child-care providers, come with accommodation, but without documents such as a rental agreement, such workers may find it difficult to prove they lived in a country prior to the Brexit date.⁵²
- ▶ **Posted workers.** Without a deal, the EU directive on posted workers—which allows employees of a company in one Member State to work temporarily in another without a work permit or the need to have their professional qualifications recognised locally⁵³—will cease to apply to the United Kingdom. However, if British workers can engage in

temporary movement under the framework of the General Agreement on Trade in Services (GATS) Mode 4, then such postings could continue, though not necessarily under such favourable conditions.⁵⁴ For example, posted workers currently have the right to contribute to host countries’ social insurance schemes rather than to their home countries’ (which could be more expensive), but this would depend on bilateral social security agreements post-Brexit.

- ▶ **Students.** After Brexit, British students may have to pay international student fees at universities in the EU-27, and they may not be eligible for support grants given to EU nationals.⁵⁵ Especially for those mid-way through courses, this cost hike could make it impossible to continue their education in the Member State. All ongoing Erasmus+ mobility activities (student exchanges, vocational training, internships, and training and work experience for teachers) that began before the United Kingdom’s departure will be covered by Erasmus+ contingency measures. The United Kingdom has pledged to continue funding the scheme until the end of 2020, but it is unclear whether British students will be able to participate in the 2021–27 cycle.⁵⁶

Regardless of whether there is a deal, Brexit will usher in significant changes for a range of UK citizens living, working, and studying in the EU-27. In the case of a no-deal exit, however, the thinning layer of EU protections will fall away even more quickly, with mounting uncertainty over what happens next and how well vulnerable groups will be able to maintain themselves.

V. WHAT CAN BE DONE TO SOFTEN THE NO-DEAL LANDING?

Despite the unpredictable twists and turns of Brexit, significant progress has been made to lessen the impact of a no-deal outcome on UK nationals in the EU-27. But while developing a contingency plan is one thing, implementing it is another. There is a risk that Member States’ post-Brexit systems will struggle to cope with the volume of applicants and, in many cases, relatively short deadlines. And without piloting and refining the planned measures, avoidable glitches may only be discovered once it

is too late to correct them. To minimise potential disruptions, there are a number of approaches EU-27 Member States and the United Kingdom should consider putting in place if a no-deal Brexit comes to pass (if not sooner).

A. *Maximising the number of people with proof of legal residence*

Member States have a strong incentive to ensure as many current British residents as possible can remain: to avoid creating an irregular, and potentially destitute, population unable to legally participate in the labour market (and pay taxes) or access health care, and who may be subject to potentially politically sensitive deportations. As such, they will need to support these residents in gaining the right to stay and, where possible, in acquiring the more robust status of permanent residence. They will need to develop safeguards and alternatives for those who struggle to fulfil criteria and are unjustly refused legal residence.⁵⁷ But they will also need to have robust systems for differentiating between existing British residents and new arrivals to avoid a *de facto* tolerance of illegal immigration.

Essentially, what lies ahead is a regularisation process, and therefore there is much that can be learned from previous attempts in Europe and elsewhere to get a large number of immigrants to register for a newly created status or programme.⁵⁸

Member States could consider:

- ▶ ***Minimising requirements and ensuring they are prospective, not retrospective.*** To prevent people being pushed into irregular status, countries may wish to drop some of the checks imposed on EU nationals applying for legal residence. For instance, Member States could ask workers to show a current employment contract rather than a work history. They could also consider dropping the comprehensive sickness insurance requirement for people who are economically inactive, conditional on the United Kingdom following through on its commitment to do the same for EU nationals.
- ▶ ***Adopting a flexible approach to documentation.*** While many applicants will have official documentary evidence of their lives in Europe (e.g., bank statements, tenancy and mortgage agreements, or utility bills), provisions need to be in place for people who entered the country before a certain date but are unable to document this fact. Alternatives might include social-media records or statements from

persons who work in a recognised profession (such as accountants, lawyers, and civil servants), who are also sometimes required to countersign passport applications and photos.⁵⁹

- ▶ ***Streamlining registration systems.*** Member States should design systems that are multilingual, user-friendly, and that present material in a way that is easy for applicants with limited literacy (and digital literacy) to understand. At a minimum, it should be possible to file an application online (many countries currently require in-person applications for registration and permanent residence).⁶⁰ Other adaptations could include allowing families to file a single, linked application⁶¹ or pulling in existing information about applicants from other services to autofill key sections of their application. UK citizens should receive electronic *and* physical proof of having submitted an application and, later, of being awarded post-Brexit status; these documents can be shown to border guards, employers, landlords, and others who may struggle to distinguish UK citizens who arrived before Brexit, and therefore enjoy certain rights, from those who are more recent arrivals.
- ▶ ***Ensuring that people whose applications are rejected, or who fail to register before the deadline, can appeal.*** A two-year grace period after the transition period could allow governments the time to invest in more creative and targeted outreach, with the aim of ensuring that the largest constituency possible is covered. Additionally, applications should not be rejected outright on the basis of insufficient evidence; instead, they should be returned to the applicant with a request for further documentation. All efforts should be made to minimise the number of people who fall into irregular status. Quick fixes, such as letting UK citizens continue to use the EU advice service SOLVIT after Brexit, may also help take the pressure off of application and appeal systems.

B. *Moving forward with social security negotiations*

A no-deal exit will mark the beginning, not the end, of negotiations on citizens' rights. One thing to be determined is whether the European Union will proceed with coordinated negotiations on social security, or whether Member States will each negotiate with the United Kingdom independently. Many states believe they have a privileged relationship with the United Kingdom and would wish to 'go first', but the UK government will not likely be able to negotiate in parallel with multiple teams.

Legal teams in Member States have explored the potential of reactivating social security legislation that existed prior to EU laws on the matter, but generally found that the process would not be straightforward.⁶² There is therefore a strong case for EU-UK negotiations on this topic.

To hit the ground running, both sides could consider:

- ▶ **Agreeing the negotiation process.** A multilateral negotiation over social security would be in everyone's interest, and any new agreements should contain retroactive provisions to ensure that the period of time used for negotiations does not penalise EU nationals living in the United Kingdom and UK nationals living in the European Union. EU and UK negotiators could agree a timeline now for a no-deal eventuality.

C. *Developing smart public outreach and campaigns*

While extensive Brexit-specific advice services have been established,⁶³ much of the information they provide is unclear, circular, available only in the local language, or outdated (e.g., websites still referring to the 29 March 2019 departure). Rising Brexit fatigue may mean that individuals do not take information seriously, especially since it has changed so frequently, or they may not realise that the onus is on them to take necessary steps.⁶⁴ Member States will therefore need to make information as accessible as possible—in terms of language, reading level, and format—and consider how to time outreach campaigns to engage the most people. The British consulates, who have already played a large role in reaching out to local British populations,⁶⁵ will need to consider how to reach those who are less engaged or may not self-identify as British, such as British Overseas Territories citizens.

Currently, there is a lack of clarity over who is responsible for outreach efforts. The EU-27 are assuming that the UK consular services will plug the gap, but this could limit opportunities for a more creative, whole-of-government approach that could mobilise engagement in public libraries, community centres, or even pubs. Meanwhile, the UK government has built on the £9 million it has made available for communication efforts within the country and pledged financial support for outreach to its citizens in the EU-27. In the absence of any similar EU or Member State funds, the United Kingdom announced £3 million in grant funding for civil-society organisations to inform and support UK nationals in the European Union and European Free Trade Association, and a further £300,000 for UK embassies across Europe.⁶⁶

The following guiding principles could help improve information services:

- ▶ **Thinking creatively.** Member States could match the funds allocated by the UK government to inform and support British nationals, with a special focus on reaching out to less engaged groups. Behavioural experiments point to ways social networks can be used to encourage uptake of benefits and services, strategies that could perhaps be adapted to encourage Britons who have already registered with their local authorities to recruit their friends to do the same.⁶⁷
- ▶ **Keeping information updated despite uncertainty.** Most Member States have dedicated webpages with information on citizens' rights; these should be kept up to date on a rolling basis (with a time stamp so reader can assess the accuracy) and supported, where possible, with hotlines where trained experts can answer questions and offer guidance.

D. *Planning for returns*

No matter how well orchestrated no-deal preparations are, some UK nationals will want to (or have no other choice but to) return to the United Kingdom. And though Member States have shied from stating it publicly, some British nationals will likely face deportation orders as a consequence of Brexit—many Britons in France already have been ordered to leave after being denied a *carte de séjour*.⁶⁸ The requirements placed on returning UK nationals, especially those returning with family members, could threaten family unity and continued access to benefits and services.

The UK government could therefore consider:

- ▶ **Offering help to those forced to return.** This could include setting aside emergency financial assistance for those who return destitute or with health emergencies, and considering whether some of those funds could be used to help offset costs such as Britons incur even prior to return. The UK government should also consider whether to waive or suspend income requirements for Britons returning from the EU-27 with their third-country-national family members (beyond the current 29 March 2022 grace period⁶⁹), given that the impacts of Brexit may not be fully felt for a number of years after the withdrawal, during which time families' economic circumstances may change significantly and force them to return.

E. *Beginning to rethink the future immigration system*

In the aftermath of a no-deal Brexit, many EU nationals will still wish to work in the United Kingdom, and UK nationals in Europe. The future immigration systems that will govern movement between the United Kingdom and the bloc are still to be determined, but doing so will be at the top of many agendas following Brexit—especially among employment services and the business community. Future labour mobility agreements are likely to prioritise holding a job offer and/or meeting an income threshold.⁷⁰ During the limbo period while these policies are being hashed out, newly arrived UK immigrants in EU countries (who will be subject to the rules for third-country nationals) as well as those longer-standing UK residents who do not fulfil the requirements for a post-Brexit status could find themselves in a kind of tolerated irregularity.

In the European Union, Brexit is occurring against the backdrop of broader discussions about labour migration reforms. While many countries are facing rising anti-immigration sentiment, they are also facing skills shortages and aging populations.⁷¹ Expanded labour migration routes for third-country nationals could be an alternative way for Britons to work in the European Union, but could also increase competition. Conversations about expanding the scale and scope of the EU Blue Card, for instance, could dramatically diminish the job prospects of UK nationals if employers in EU-27 countries can recruit from an EU-wide pool of skilled third-country-national workers.

EU-27 countries could consider:

- ▶ ***Loosening language requirements for skilled workers.*** Allowing applicants with English skills, instead of local language proficiency, to qualify for admission could facilitate the recruitment of skilled workers from around the world.
- ▶ ***Creating an opportunity for integration.*** Brexit may mark a turning point after which British communities in Europe become more settled. As such, policymakers should consider ways to make use of

this status change to promote their integration. The integration needs of EU nationals in other Member States have historically been a blindspot, with EU institutions largely refusing to acknowledge that mobile Europeans may share needs with other immigrants. The European institutions could consider loosening the rules on how funding from the Asylum, Migration, and Integration Fund (AMIF) is used so that EU nationals, present and past (that is, including UK nationals in the EU-27), and perhaps even a country's own citizens, can access AMIF-funded courses that support language learning and other integration services.

- ▶ ***Reconsider restrictions on dual nationality.*** Member States with restrictions on dual citizenship, and particularly those with large UK-national populations (e.g., Spain), could consider loosening these restrictions to encourage foreign-born residents to work towards citizenship. Doing so would communicate a message of welcome to resident UK nationals and encourage not only their integration, but that of other immigrants as well.

Free movement has gradually become more inclusive since it was introduced for workers in the 1957 treaty on the European Economic Community, but Brexit has exposed the fault lines along which it is out of sync with modern mobility. An updated system would have to be flexible enough to accommodate many forms of movement, including frequent travel to live and work across borders as well as permanent settlement.

Conversations about the fate of UK nationals living in Europe after Brexit are not happening in a vacuum. Brexit is a litmus test for free movement as a whole; the challenges that arise in the coming years will set the tone for the future of free movement and may even catalyse—or dampen—conversations about labour migration and reforms to the EU Blue Card. Free movement is one of the European Union's most celebrated achievements, and ensuring that UK nationals do not suffer for having exercised this right could be a precious opportunity to reinforce the value of EU citizenship—and of being a member of the club in the first place.

Free movement is one of the European Union's most celebrated achievements, and ensuring that UK nationals do not suffer for having exercised this right could be a precious opportunity to reinforce the value of EU citizenship.

ENDNOTES

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- 17 European Commission, 'Brexit: European Commission Implements "No-Deal" Contingency Action Plan in Specific Sectors' (press release, Brussels, 19 December 2018), http://europa.eu/rapid/press-release_IP-18-6851_en.htm. The European Commission also urged all Member States to be ready to issue residence permits to UK nationals as evidence of the right to stay in that Member State and the right to work. These permits may be temporary for an initial transition period but should gradually be replaced by final permits in the uniform EU format. See European Commission, 'The Rights of UK Nationals Living in the EU in the Event of "No Deal"'
- 18 Comments by participant at the roundtable 'Beyond Preparedness: Protecting Citizens' Rights in the EU-27 after Brexit', Migration Policy Institute (MPI) Europe and Goldsmiths University, Brussels, 4 June 2019. Participants are not identified as the roundtable was held under Chatham House Rule.
- 19 For instance, according to a German advice website 'the Federal Government intends [sic] for all UK citizens who previously had the right to free movement, and their family members, to be able to obtain a residence permit for their ongoing residency after the transition period. The Federal Government will put in place necessary legal framework conditions.' See German Federal Ministry of the Interior, Building, and Community, 'FAQs on Citizens' Rights in the Context of Brexit', accessed 2 September 2019, www.bmi.bund.de/SharedDocs/faqs/EN/themen/migration/brexit/faqs-brexit.html.
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- 21 For instance, officials in Sweden had to decide what could be achieved through executive action and what could wait for legislation. Comments by participants at MPI Europe-Goldsmiths roundtable 'Beyond Preparedness'.
- 22 Comments by participants at MPI Europe-Goldsmiths roundtable 'Beyond Preparedness'.
- 23 While the authorities believe the unregistered population is small, Brexit and its aftermath may be a wake-up call. For example, anecdotal evidence shared with this brief's authors suggests many UK nationals are able to live, work, and rent accommodation in Brussels for a year or more without being registered.
- 24 The interest group British in Europe distinguishes between 'declarative' and 'constitutive' registration processes, with the former based around current registration systems and the latter based on a new application process. This distinction may prove to be somewhat of a red herring. Registration before the Brexit deadline will provide the clearest form of proof of date of arrival, even if people are required to apply under a new system after Brexit. Registration is therefore likely to be the basis of any system to determine entitlement to a post-Brexit status (whether it is declarative or constitutive). But with many existing barriers in current systems that may deter EU nationals from registering, and under-registration in several countries, Member States will need to make provisions for alternative ways to prove length of residence. There is huge appetite for having formal, hard copy proof (to show employers and landlords, for example), which may not be provided by existing municipal registration systems.
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ACKNOWLEDGMENTS

This policy brief was made possible through support from Barrow Cadbury. It also draws from a prior research conducted by the Migration Policy Institute (MPI) Europe in collaboration with the project BrExpats: Freedom of Movement, Citizenship, and Brexit in the Lives of British Citizens Resident in the EU-27, led by Michaela Benson at Goldsmiths, University of London. This research is funded by the UK in a Changing Europe initiative.

The authors thank participants of the roundtable ‘Beyond Preparedness: Protecting Citizens’ Rights in the EU-27 after Brexit’, as well as the numerous officials and experts they have spoken to in the course of this project. Finally, the authors thank MPI colleagues and interns: Katarzyna Czyż, Maria Gargano, Michelle Mittelstadt, Liam Patuzzi, Timo Schmidt, Lauren Shaw, Trevor Shealy, and Benedicta Solf for research and administrative assistance, editing, and advice.

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Design: April Siruno, MPI
Layout: Liz Heimann

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Suggested citation: Benton, Meghan and Aliyyah Ahad. 2019. *On the Brink: Prospects for UK nationals in the EU-27 after a no-deal Brexit*. Brussels: Migration Policy Institute Europe.

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